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225-3741

NINETY-SECOND CONGRESS

# Congress of the United States

## House of Representatives

FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE  
 OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B371-B  
 WASHINGTON, D.C. 20515

72-529  
 5240

September 29, 1972

Honorable Richard Helms  
 Director  
 Central Intelligence Agency  
 Washington, D. C. 20505

Dear Mr. Helms:

As you know, the Foreign Operations and Government Information Subcommittee of the House Government Operations Committee conducted extensive oversight hearings this spring into the administration of the Freedom of Information Act (5 U.S.C. 552) by Executive departments and agencies during the past five years.

A copy of these hearings and the report based on them (H. Rept. 92-1419) are enclosed for your information. The report was unanimously approved by the Government Operations Committee last week and includes a number of important administrative recommendations directed to all Executive departments and agencies. They may be found on pages 81 and 82.

The Committee is convinced that many improvements in the operation of the Freedom of Information Act can be achieved by these administrative actions if they receive the full and active support by the head of each department and agency.

We are therefore requesting that you provide the Subcommittee with a formal response to these administrative recommendations, indicating what steps you plan to take to implement them, a timetable for such implementation, and such other actions you contemplate to improve the administration of the Act in your agency. If your agency does not intend to implement the Committee's recommendations, please explain. I would appreciate having such information by Wednesday, November 1, so that they may be properly evaluated prior to the beginning of the next Congress.

Honorable Richard Helms  
September 29, 1972  
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Your cooperation in this important matter will be most appreciated.

With best regards,

Sincerely,

A handwritten signature in cursive script, reading "William S. Moorhead". The signature is written in dark ink and is positioned above the printed name and title.

WILLIAM S. MOORHEAD  
Chairman

And, the report added, "the right of the individual to be able to find out how his Government is operating can be just as important to him as his right to privacy and his right to confide in his Government."

Now, I don't think that any reasonable private citizen nor any individual in Government service can deny such a goal as a necessary objective. But its practical achievement, it seems to me, lies in the key words "workable balance" and "without indiscriminate secrecy."

For no one can also fail to realize—as indeed the Freedom of Information Act does in its nine exemptions—that Government must conduct part of its operations privately if it is successfully to formulate its policies and reach its final decision in both foreign and domestic affairs. But once those final decisions are made, again with the exception of the exemptions voted in the act, they should become a matter of public record and knowledge without question, without bureaucratic delay or subterfuge.

It is within this context and the broad philosophical conviction that underlies the Freedom of Information Act that the committee makes the following administrative and legislative recommendations based upon the indepth investigations, studies, analyses, hearings, and day-to-day oversight of the administration of the act conducted by the Foreign Operations and Government Information Subcommittee.

#### Administrative Recommendations

The committee recommends that the following administrative actions be taken by the appropriate Federal departments and agencies to improve the administration, operation, and obtain full compliance with the provisions of the FOI Act. (For findings and conclusions, see ch. II of this report, p. 6.)

The Department of Justice should

- initiate a review of all agency regulations to determine the degree of compatibility with the Attorney General's memorandum and subsequent court decisions. Wherever deficiencies or inadequacies are found, such agencies should be advised to promulgate necessary amendments to their regulations to bring them into conformity with the spirit, as well as the letter, of the FOI Act.
- establish a regular procedure by which the Office of Legal Counsel will issue advisory opinions on the act to all agency general counsels and public information officers which opinions should also call attention to significant court decisions in FOI Act cases.
- prepare a pamphlet in simple, concise language for the general public, to be published by the Government Printing Office, setting forth the basic principles of the Freedom of Information Act, the procedures by which a citizen may obtain public records from a Federal agency, his right to appeal a denial of his request, including court remedies, and other similar advice concerning the citizen's rights under the act.

## Federal departments and agencies should

- improve their system for keeping records of requests for information under the FOI Act, thus making possible a more adequate evaluation of the agency's performance in complying with the provisions of the act. Such action should include top-level administration supervision and oversight.
- each agency head should make a positive statement affirming his personal commitment to the principles embodied in the FOI Act.
- centralize within the department or agency and provide policy direction to field offices to properly implement administrative procedures affecting the FOI Act so as to achieve better coordination among all subagencies or units within the parent entity.
- require that letters refusing access to public records notify the requestor of the right of administrative appeal where it exists and cite the specific subsection or subsections of the FOI Act which are the basis for the initial refusal.
- assure maximum participation of and consultation with public information personnel in administrative actions under the Freedom of Information Act.
- establish on a uniform basis the lowest reasonable search and reproduction fees for documents made available under the act and include provisions for waiver of fees in hardship cases or when waiver would serve the public interest.
- institute seminars and other training procedures to make sure that all affected employees understand the importance, intent and proper administration of the FOI Act, including the preparation of pamphlets explaining procedures under the act.

## Legislative Objectives

The legislative history of the Freedom of Information Act is not clear and simple, nor is the act itself. It contains general phraseology, undefined terms, and loosely drawn provisions that have bothered the courts as well as Government officials seeking to interpret the act. Like most important legislation, the version of the freedom of information bill finally enacted into law after 11 years of effort was a compromise that involved various public interest groups, the House of Representatives, the Senate, and officials of the executive branch. The purpose of the following legislative objectives is to clarify the compromises in the FOI Act that have been the source of confusion and misinterpretation. They are also intended to reflect some of the leading court decisions that interpreted vague phraseology. These objectives are based on the constructive suggestions presented to the subcommittee by leading legal authorities on the act.

The legislative objectives are, for the most part, in general, non-legislative language. Specific statutory language to carry out the objectives of this report will be drafted for introduction and consideration by the committee. All but three of the legislative objectives

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## ROUTING AND RECORD SHEET

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Office of Legislative Counsel  
7 D 35 Hqs.

EXTENSION

NO.

DATE

3 October 1972

STAT

TO: (Officer designation, room number, and building)

DATE

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Attached is a letter to the Director from Chairman Moorhead forwarding hearings and a report by the Foreign Operations and Government Information Subcommittee concerning the Freedom of Information Act. You will note that Chairman Moorhead is asking all agencies for certain comments particularly on administrative recommendations on page 81 (for the Department of Justice) and 82 (for all other agencies) of the report. It would be appreciated if we could have your specific recommendations for a proposed reply from the Director for Chairman Moorhead. Copies of the hearings are available if you want to review them. We will get you copies of the report, but in the interim I am attaching copies of pages 81 and 82.

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Assistant Legislative Counsel

Atts

cc: Mr. Thuermer  
OGCFORM  
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